

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

RICHARD FERRARI and WILLIAM
BOHR, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

VITAMIN SHOPPE, INC.,

Defendant.

CIVIL ACTION NO. 17-10475-GAO

REQUEST FOR ORAL ARGUMENT

Leave to file excess pages granted on
January 19, 2021 [ECF No. 131]

**DEFENDANT VITAMIN SHOPPE INDUSTRIES, LLC’S
MOTION TO EXCLUDE THE
EXPERT REPORTS AND TESTIMONY OF STEFAN BOEDEKER**

As part of its opposition to Plaintiffs’ Motion for Class Certification, Defendant Vitamin Shoppe Industries, LLC (“Vitamin Shoppe”) files this Motion to Exclude the Expert Reports And Testimony of Plaintiffs’ Expert Mr. Stefan Boedeker under Rule 702 of the Federal Rules of Evidence and *Daubert v. Merrell Dow Pharma., Inc.*, 509 U.S. 579 (1993), on the grounds that Mr. Boedeker’s proposed testimony is inadmissible under *Daubert* because it fails *Daubert*’s relevancy or “fit” requirement as it proffers no evidence or opinion on the existence of class-wide injury, impact, causation or damages and is otherwise purely speculative and Mr. Boedeker’s proposed survey methodology is contrary to accepted standards and is scientifically unreliable.

In support of its Motion, Defendant relies upon its Memorandum of Law and the Declaration of Michael R. McDonald in Support of Motion To Exclude the Expert Reports and Testimony of Stefan Boedeker and Dr. Darren Candow, and exhibits attached thereto.

**DEFENDANT VITAMIN
INDUSTRIES, LLC**

By its Attorneys

/s/ Michael R. McDonald

Michael R. McDonald (admitted *pro hac*
vice)

Caroline E. Oks (admitted *pro hac vice*)

Mary K. Bessemer (admitted *pro hac vice*)

GIBBONS P.C.

One Gateway Center

Newark, New Jersey 07102

Telephone: (973) 596-4500

mmcdonald@gibbonslaw.com

coks@gibbonslaw.com

mbessemer@gibbonslaw.com

Andrea C. Kramer, Esq. (BBO# 632584)

KRAMER LAW LLC

P.O. Box 1436

Brewster, MA 02631

Telephone: (617) 780-1685

andrea@kramerlawllc.com

Dated: March 22, 2021

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021, I served a copy of this Motion on all counsel of record by filing the pleading through the Electronic Case Filing (ECF) system and by first-class mail to those counsel not registered with ECF.

/s/ Michael R. McDonald
Michael R. McDonald

LOCAL RULE 7.1(A)(2) CERTIFICATION

I, Michael R. McDonald, certify that I have conferred with Plaintiffs' counsel in a good faith effort to resolve or narrow the issues presented in this motion.

/s/ Michael R. McDonald
Michael R. McDonald